Supreme Court, U.S.
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No. 04-

IN THE

Supreme Court of the United States

SAMUEL KENNEGTH BEAUMONT,

Petitioner,

v.

SAMMY CASTATOR, as Executor of the Estate of EARL WAYNE MEADOWS and as potential Heir; and KATHRYN L. CASTATOR CREASON, BETTY CARTER MASCHO, ROBERT MEADOWS, BILLIE J. CASTATOR MEYER, as potential Heirs, and ANY OTHER PERSON CLAIMING AS AN HEIR, KNOWN OR UNKNOWN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS DIVISION I OF THE STATE OF OKLAHOMA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Providing personal services is consideration for an oral contract to devise. The common law of Oklahoma presumes that when a person provides substantial services of a personal nature to another person to whom he is not related by consanguinity or affinity he provides those services as consideration for a contract, not gratuitously. Samuel Beaumont and Earl Meadows had an oral contract. Samuel Beaumont provided substantial personal services to Earl Meadows for almost 24 years in a loving, caring, and committed relationship. In exchange for the services, Meadows left his entire estate to Beaumont by will, however the will failed. Beaumont seeks to enforce the oral contract.

The question presented is whether the Oklahoma Court of Civil Appeals violated Beaumont's right to Equal Protection when the court found that Beaumont and Meadows contracted to live as a family and used that finding to construe the presumption of gratuity *against* Beaumont since two hetèrosexual persons in the same type of relationship would have the protection of either intestacy laws if married or the presumption of non-gratuity if not.

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Oklahoma Court of Appeals in this case.

OPINIONS BELOW

On September 12, 2002, the trial court offered a brief unpublished opinion from the bench before entering judgment. (App. B) During closing argument by the heirs' counsel that Beaumont and Meadows had a relationship like a husband and wife, counsel asked the court to find that Beaumont had provided 24 years of services gratuitously and to sustain the heirs' demurrer. The court responded by stating that although it recognized that there was a long standing relationship and although the state should recognize the relationship, it did not and so the court was sustaining the demurrer. Beaumont filed his appeal, with the American Civil Liberties Union filing as amici curiae. On February 13, 2004, the Court of Civil Appeals by an unpublished opinion found that Beaumont and Meadows had a contractual agreement to live as a family, but again construed the presumption of gratuity against Beaumont, leaving him with no protection. (App. A) On March 18, 2004, the Court of Civil Appeals denied Beaumont's Petition for Rehearing. (App. C) The Oklahoma Supreme Court denied Beaumont's Petition for Certiorari on June 1, 2004.

STATEMENT OF JURISDICTION

The Oklahoma Supreme Court denied Beaumont's Petition for Certiorari on June 1, 2004. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a) and § 2101(c).

CONSTITUTIONAL AND COMMON LAW PROVISIONS

The Fourteenth Amendment to the United States Constitution provides that

> [n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Oklahoma Supreme Court held "[w]here the provider of personal services is in no way related to the person for whom the services were provided, there is no presumption such services were rendered gratuitously."[1] In the same vein the Oklahoma Supreme Court has held that there is "a 'presumption' in the case of close relatives, that [personal] services were furnished gratuitously and more because of mutual love, affection, esteem, high regard, gratitude, and/or hope of some future but undetermined reward, than in performance of the claimed contract."[2]

The Oklahoma Court of Civil Appeals held in the instant case that "Beaumont was the partner who was in a position to be a family caretaker while the other worked outside the home. Friends and family members do this." (Opinion at ¶12)

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[1] *Johnson v. Hazaleus*, 1959 OK 62, 338 P.2d 345.

[2] *York v. York*, 1953 OK 336, 270 P.2d 656.

STATEMENT OF THE CASE

The trial court stated that "[t]his has been a — and is a difficult case. Clearly there is a relationship of long standing between the decedent [Earl Meadows] and the plaintiff [Petitioner Beaumont], and between the decedent and the sons of the plaintiff. And were such relationship recognized by Oklahoma law we also wouldn't be here. Should the State recognize them? Probably so. Is the State likely to? Probably not." (Tr. at 190)

In 1977, Petitioner Samuel Kennegth Beaumont ("Beaumont") and decedent Earl Wayne Meadows ("Meadows") entered into an oral contract to live as a family. Beaumont brought his three sons with him and together they built a house on land next to Meadows' parents near Bristow, Oklahoma. During a life together of almost 24 years on the Crown M Ranch the men raised Beaumont's sons, Beaumont cared for Meadows' parents as they became ill and died, and Beaumont cared for Meadows after he had a stroke in 1997 until his death in September 2000. In 1995 Meadows executed a will leaving his estate to Beaumont. The will failed for want of a witness. Beaumont was not protected by the intestacy statute which protects married persons and blood relatives. Beaumont was left to pursue the estate by enforcing their oral contract. Because Meadows and Beaumont were not married or related by blood, Beaumont was entitled to rely on Oklahoma common law that presumed that his almost 24 years of service were consideration for the oral contract.

1. On September 12,2002, the trial court entered judgment without findings of fact or conclusions of law, stating that "Defendant's demurrer should be sustained. Plaintiff's claim to the estate of Earl Wayne Meadows is

hereby denied in full and Judgment is entered for Defendants." The trial court awarded Beaumont's ranch and the house he built with Meadows to Meadows' cousins.

In his closing argument, the heirs' attorney argued that Meadows and Beaumont were just like a married couple and therefore the presumption of gratuity should be construed *against* Beaumont, despite the fact that there was no legal relationship. This construction denies Beaumont the only protection available to gay men and lesbians under Oklahoma law and denies Beaumont equal protection of the law.

2. Beaumont filed his appeal seeking reversal. The American Civil Liberty Union, in its amicus brief, argued specifically that the trial court must have misapplied the presumption of non-gratuity to reach its conclusion. As a gay man in a committed un-married relationship, Beaumont belongs to the only class of persons that such a construction leaves without any protection or remedy. A heterosexual couple has protection on two levels, they can marry by statute or by operation of common law and in either case the survivor is protected by intestacy laws under 84 O.S. § 213. Unmarried heterosexual partners who specifically hold themselves out as not married do not have a common law marriage but the survivor enjoys the protection of the presumption of non-gratuity and is compensated for services directly, not under the intestacy statute.[3]

The Oklahoma Court of Civil Appeals ("COCA") issued its eleven-page Opinion on February 13, 2004, including finding that "[w]ith respect to the oral contract, the evidence supports the men's decision to form a family relationship." (Opinion at ¶ 9)

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[3] *Hand v. Warlick*, 2001 OK CIV APP 105, 31 P.3d 1071.

3. On March 4, 2004, Beaumont Petitioned for Re-Hearing arguing that COCA had violated Beaumont's right to Equal Protection and misapplied Oklahoma case law when it construed the presumption of gratuity *against* him rather than in his favor. Beaumont argued that Equal Protection was implicated by the trial court's decision. In recognizing the long term relationship but in construing that relationship *against* Beaumont the trial court violated Beaumont's Fourteenth Amendment right to equal protection. Under Oklahoma law, marriage is a contract, but one that provides statutory protection to the survivor if his or her partner dies without a valid will.[4] As a homosexual in a committed long-term relationship, Beaumont is in the only class of persons not protected by either the intestacy laws or the failsafe protection of the presumption of gratuity necessary to enforce an oral contract. On March 18, 2004, COCA denied Beaumont's Petition for Rehearing.

4. On April 7, 2004, Beaumont filed his Petition for Certiorari with the Oklahoma Supreme Court. On June 1, 2004, the Oklahoma Supreme Court denied Beaumont's petition.

5. This Petition for a Writ of Certiorari follows pursuant to 28 U.S.C. § 1257(a) and § 2101(c).

The decision by COCA violates Beaumont's right to equal protection of the laws. Oklahoma common law presumes that persons who are related by blood or marriage provide services gratuitously, not in expectation of a return. In *York*, the Court found "[t]he facts concerning this relationship [between uncle and nephew] strongly induce the

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[4] 43 O.S. § 1; 84 O.S. § 213.

belief, often referred to as a 'presumption' *in the case of close relatives*, that such services were furnished gratuitously . . ."[5] Although the presumption is construed against blood relatives the survivors are still protected by intestacy laws.[6] Beaumont is *not* related to Meadows by blood or marriage and is not protected by intestacy laws. COCA found Beaumont provided services for almost 24 years gratuitously.

Where there is no relation by blood or marriage, "[t]here is no presumption that such services were rendered gratuitously."[7] An invalid will may be used as evidence of an intent by the deceased to fulfill his part of the contract and devise pursuant thereto. "Here we have the substantiating evidence by the decedent himself. Such instrument, not being [properly witnessed], could not be admitted to probate as a will, yet it does lend certainty and definiteness to the contract and takes the terms thereof out of the realm of the speculative."[8] COCA found that the will by Meadows could be evidence of his intent to devise the estate to Beaumont, but did not construe Meadows' intent in favor of Beaumont. Because the trial court's judgment was pursuant to demurrer, failure to construe evidence solely in Beaumont's favor was error. "A demurrer to the evidence of plaintiff will be treated as a motion of judgment for the defendant. Thus the court shall weigh the evidence and render judgment if the evidence of the plaintiff is insufficient for judgment in his favor."[9]

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[5] *York v. York*, 1953 OK 336, 270 P.2d 656 (emphasis provided).

[6] 84 O.S. § 213

[7] *Johnson v. Hazaleus*, 1959 OK 62, 338 P.2d 345.

[8] *Johnson v. Hazaleus*, 1959 OK 62, 338 P.2d 345.

[9] *Crossman v. Reeves*, 1992 OK 12, 825 P.2d 1330.

> In determining whether a plaintiff's evidence is sufficient to withstand a motion for directed verdict, *the trial court must consider as true* all evidence favorable to the plaintiff together with all reasonable inference to be drawn from it, and *disregard all conflicting evidence favorable to the movant.* Only if all the inferences to be draw from the evidence are in favor of the moving party will a directed verdict withstand appellate scrutiny.[10]

COCA and the trial court failed to properly consider Beaumont's evidence that he fully preformed the oral contract and that the will, although invalid, was evidence that Meadows attempted to comply.

Equal protection was first implicated by the trial court's judgment coupled with the comments from the bench and from the attorneys representing the heirs. The COCA Opinion reinforced Petitioner's belief that he was denied equal protection. "[T]he action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, . . ."[11] "The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government."[12] "Oklahoma recognizes the existence of an 'equal protection clause,' as a component of our due process clause. Although

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[10] *Harder v. F.C. Clinton, Inc.*, 1997 OK 137, 948 P.2d 298 (emphasis in original).

[11] *Shelley v. Kraemer*, 334 U.S. 1 (1948).

[12] *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930).

the Oklahoma Constitution does not include an equal protection clause like that found in its federal counterpart, Oklahoma has identified a functional equivalent of that clause in the anti-discrimination component of the due process section, Art. 2, § 7, Okl.Const."[13] Equal protection can be violated through the interpretation of a law.[14] "Whoever by virtue of his public position under a state government . . . denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the state and is clothed with the state's power, his act is that of the state."[15] An equal protection challenge may be based on common law.[16] Oklahoma does not have a statute that creates the presumption that persons related by blood or marriage provide services gratuitously and that persons who are not related by blood or marriage do not, but has created the presumption by common law.[17]

Beaumont and Meadows could not marry but still contracted to live as a family. "[C]hoices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the

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[13] *Account Specialists & Credit Collections, Inc. v. Jackman*, 1998 OK CIV APP 175, 970 P.2d 202.

[14] *Francis v. Immigration & Naturalization Service*, 532 F.2d 268 (2nd Cir. 1976).

[15] *Allen v. Oklahoma City*, 1935 OK 1143, 52 P.2d 1054.

[16] *Forbush v. Wallace*, 341 F.Supp. 217 (M.D. Ala. 1971) *aff'd* 405 U.S. 970 (1972).

[17] *Johnson v. Hazaleus*, 1959 OK 62, 338 P.2d 345; *York v. York*, 1953 OK 336, 270 P.2d 656.

role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme."[18] Beaumont and Meadows made a choice to enter into an intimate relationship in 1977, but they were faced with numerous obstacles. Until June 26, 2003, homosexual conduct was criminal in Oklahoma. "The stigma this criminal statute imposes, moreover, is not trivial."[19]

The services Beaumont provided cannot be evaluated as normal domestic and ranch services.[20] The only way Beaumont can recover is if the presumption is construed in his favor. As a man in a gay relationship Beaumont is in the unique position of being in the only class in which the presumption can be construed against him for complete denial of recovery. Under 84 O.S. § 213, a heterosexual couple living together as man and wife can create a common law marriage[21] by holding themselves out as married, with the survivor entitled to recover as a surviving spouse. The same result occurs if the heterosexual couple were married with a license and ceremony. Further if a heterosexual couple does *not* hold themselves out as married and the survivor does not recover under 84 O.S. § 213 as a surviving spouse, he or she still recovers under quantum merit because of the presumption that the services were not provided gratuitously.[22] It is *only*

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[18] *Roberts v. United States Jaycees*, 468 U.S. 609 (1984).

[19] *Lawrence v. Texas*, 539 U.S. 558 (2003).

[20] *Brooks v. Yarbrough*, 37 F.2d 527 (10th Cir. 1930).

[21] *Standefer v. Standefer*, 2001 OK 37, 26 P.3d 104; *Tower v. Townie*, 1961 OK ____, 368 P.2d 488.

[22] *Hand v. Warlick*, 2001 OK CIV APP 105, 31 P.3d 1071 (heterosexual couple specifically held themselves out as *not* married and therefore no common law marriage existed. However, survivor of six year relationship still entitled to claim for value of services).

when the two persons are gay in a loving committed relationship, living as a family, that construing the presumption against the survivor creates an absolute bar to recovery. Beaumont is looking at such a bar.

REASONS FOR GRANTING THE PETITION

In Upholding of the Trial Court's Decision to Deny Beaumont the Protection of the Presumption of Non-Gratuity, the Oklahoma Court of Civil Appeals Issued a Decision that Conflicts with the Supreme Court's Equal Protection Jurisprudence.

The Oklahoma Court of Civil Appeals has set forth no legitimate reason for the State to construe the presumption of gratuity against Beaumont. Oklahoma law recognizes the presumption that one who is not related enjoys the presumption the he provides services *non*-gratuitously with an expectation of return. Oklahoma courts have consistently held that if the parties are not related, the presumption of non-gratuity applies and if they are related it does not. There are no Oklahoma cases in which a person who is not related by blood or marriage is denied *any* recovery, until Beaumont. The decision is clearly based on Beaumont being a homosexual. Applying a facially neutral law differently against different portions of the populace, although they are in similar circumstances, constitutes a denial of equal justice under the Fourteenth Amendment.[23] The Oklahoma court violated Beaumont's right to equal protection by applying the law against Beaumont because he is homosexual. The application of the law is not in conformance with the precedent set by this court in *Romer* and its progeny.

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[23] *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

"Equal protection of the laws is not achieved through indiscriminate imposition of inequalities."[24] Construing the presumption against Beaumont is inequitable and the court has not set forth any policy in favor of its construction. Beaumont worked for twenty-four years for his and Meadows' mutual benefit and the construction imposed by the courts results in a complete loss to him and a windfall for the heirs. Beaumont will lose the home he and Meadows built in 1977 and in which he has lived since, in addition to the ranch he helped build. Beaumont is not protected by 84 O.S. § 213, so construing the presumption of gratuity against him denies him equal protection. This construction punishes Beaumont as a gay man in a way that heterosexuals are not punished. Such punishment does not further any interest of the State. "If the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest."[25]

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[24] *Romer v. Evans*, 517 U.S. 620 (1996) *citing Shelley v. Kraemer*, 334 U.S. 1 (1948).

[25] *Romer v. Evans*, 517 U.S. 620 (1996) *citing Dept of Agriculture v. Moreno*, 413 U.S. 528 (1973) (emphasis in original).

CONCLUSION

For the foregoing reasons, a petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA FILED FEBRUARY 13, 2004

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION I

No. 98,379

IN THE MATTER OF THE ESTATE OF EARL WAYNE MEADOWS, Deceased.

SAMUEL KENNEGTH BEAUMONT,

Plaintiff/Appellant,

vs.

SAMMY CASTATOR, as Executor and as potential heir; and KATHRYN L. CASTATOR CREASON; BETTY CARTER MASCHO; ROBERT MEADOWS; BILLIE J. CASTATOR MEYER, as potential heirs; and ANY OTHER PERSON CLAIMING AS AN HEIR, KNOWN OR UNKNOWN,

Defendants/Appellees.

APPEAL FROM THE DISTRICT COURT OF CREEK COUNTY, OKLAHOMA

HONORABLE RICHARD A. WOOLERY, JUDGE

AFFIRMED

Appendix A

Opinion by Kenneth L. Buettner, Judge:

Earl Wayne Meadows and Samuel Kennegth Beaumont lived together in Creek County, Oklahoma for nearly twenty-four years, when Meadows died. Beaumont offered for probate the purported last will and testament of Meadows, which left everything to Beaumont. However, the document failed for lack of a proper notarization and witnesses. Thereafter, Beaumont sued the estate claiming an oral contract to devise property, an implied partnership, or that a resulting trust should be formed of the estate property. The court sustained Defendants' (cousins of Meadows) demurrer. We affirm.

Meadows and Beaumont met in 1977 and within six months decided to live together as a family along with Beaumont's three young sons. The four of them moved to Meadows' ranch in Creek County, Oklahoma. Meadows' parents lived on contiguous property and had already deeded twenty acres to their son. After Beaumont and his three sons moved in, the parents deeded another forty acres to their son. The men, with the help of Meadows' father, contracted and built a house for the men and boys on the sixty-acre ranch.

Meadows worked as a comptroller at a factory in Bristow. At company picnics, he introduced the boys as his sons. Beaumont, who had worked with livestock previously, continued working with livestock on the ranch and took care of the house and chores. He was also a veteran and received a disability pension. The boys rode with Meadows to school in the mornings and returned to the ranch by school bus in the evenings. The boys called Meadows' parents "Grandma" and "Papa."

Appendix A

Meadows kept all accounts and property in his own name. He listed Beaumont's children as dependents for health insurance and income tax purposes, but not Beaumont. Beaumont stopped filing tax returns after the men started living together. He gave Meadows information about the ranch's accounting, which always experienced a loss. Beaumont did not have his own bank account. His disability/ pension checks and ranch receipts were deposited into accounts held in Meadows' name.

Beaumont was the primary person who helped care for Meadows' mother and father in their last illnesses. He also was the caretaker for Meadows during his last illness. Meadows listed Beaumont as his healthcare proxy. Meadows also made him beneficiary of his life insurance policy and his 401 (k) retirement account. A document purporting to be executed by Meadows, attempting to leave everything to Beaumont, was offered to show Meadow's intent to leave his estate to Beaumont. This document was not admitted to probate.

In his petition, Beaumont alleged that he and Meadows had entered a partnership/joint venture to share a household and rear Beaumont's three sons. He further alleged that they entered an oral contract in which each promised the other his entire estate existing at death. He stated that they commingled their assets. He also pled the equitable theories of constructive trust (resulting trust in the brief), unjust enrichment, and inter vivos gift.

At trial, Beaumont, one of his sons, and a family friend testified. Many documents were offered and quite a few accepted into evidence. After Beaumont rested, the trial court

sustained Defendants' demurrer. "In equity a defendant's 'demurrer' to the evidence is treated as a motion for judgment in demurrant's favor. Unlike in law actions, a demurrer in equity does not require the judge to disregard all evidence favorable to the demurrant's position, but, on the contrary, calls upon the chancellor-trier to consider and weigh all the evidence adduced to determine in whose favor it preponderates." *Snow v. Winn*, 1980 OK 27, ¶ 3, 607 P.2d 678, 680. "On appeal from the equity order sustaining a 'demurrer' to the evidence, the judgment of the trial court must be affirmed unless found to be against the clear weight of the evidence." *Id.*

Beaumont contends that the trial court erred in sustaining Defendants' demurrer thereby finding that he did not introduce adequate evidence that he and Meadows formed an enforceable oral contract. He also asserts that the trial court should have acted in equity and placed the corpus of the estate in a resulting trust so as not to unjustly enrich the Defendants with his years of labor and contribution to the value of the estate. Finally, he claims that the trial court should have found an implied partnership between him and Meadows.

With respect to the oral contract, the evidence supports the men's decision to form a family relationship. However, in order to prove an oral contract to devise property, the proof of specific performance sufficient to relieve the process from the statute of frauds must relate to devolution. There had to be proof that the men formed their relationship in order to inherit from each other. That was the key proof lacking. For instance, in *Holt v. Alexander*, 1952 OK 296, 248 P.2d

228, a daughter was promised by her stepfather that if she moved in with her mother and him and watched after and cared for them in their declining years, then he would will her the house. Neighbors testified that indeed the stepfather spoke of this arrangement. The Holt court noted the rule that complete performance of the oral contract by the one seeking to avail herself of the benefits of the contract takes the case out of the operation of the statute of frauds. It then, citing *Pancoast v. Eldridge*, 1928 OK 653, 273. P. 255, (syllabus by the court ¶ 1), restated the standard of proof required to specifically enforce an oral contract to devise property – ". . . so cogent, clear, and forcible as to leave no reasonable doubt as to its terms and character."

Likewise, in *Johnson v. Hazaleus*, 1959 OK 345, 338 P.2d 345, the court found that Hazaleus had performed his part of the oral contract to have the land Sharp promised to will to him. He farmed the land and took care of Sharp. Right before Sharp's suicide, Sharp attempted to write a holographic will leaving the farm to Hazaleus. The will failed for want of a date. The court allowed the will as proof of intent with respect to the oral contract.

What is evident from these cases is that the services performed would not have been performed except for the contract to devise property. *Cf. Estate of White*, 2001 OK CIV APP 105, 31 P.3d 1071, where a man and a woman were living together in, a spouse-like manner. The woman died and the man attempted to prove an oral contract for devolution of her real estate in his favor. The White court found that his services, such as repair work around the house, were not "'. . .exceptional and extraordinary' in the context

of the spousal-type relationship the parties maintained." *Id.* at ¶ 11, p. 1074.

The record does not support a conclusion that Beaumont formed his relationship with Meadows for the purpose of someday inheriting all of Meadow's property. The men desired to be a family. Beaumont did not show that he lived with Meadows for twenty-four years in a loving, committed relationship for the purpose of inheriting. The services that Beaumont provided were not unique or extraordinary. Rather, they were the sort of services two or more people living together, regardless of intimacy, do for the other. Each had their own talents and made their own contributions to the family relationship. Although he now claims that his acts of caring for Meadows' parents, then Meadows, while they were ill were not gratuitous, it is clear they were. There was certainly no intimation in 1977 that caretaking would be necessary. Beaumont was the partner who was in a position to be a family caretaker while the other worked outside the home. Friends and family members do this. In *York v. York*, 1953 OK 336, 270 P 2d 656, 658, ¶ 9, the court stated, with respect to the performance sufficient to take the oral contract out of the statute of frauds that it "must be clearly referable to the contract. . . ."

Beaumont also argues that the invalid will should have been admitted to show intent to leave him the property. The will was not admitted to probate because it was not properly notarized or witnessed. The record shows that Beaumont intended to make an offer of proof and the document is in the record forwarded for appeal, but whether he indeed made the offer is not so clear. Nonetheless, there

was testimony about the document and it can be argued that Meadows attempted to write a will in which he left everything to Beaumont. Even if admitted for that purpose, evidence of, intent to leave Beaumont the estate, it would not be evidence of a 1977 oral contract to leave him the estate. The trial court was entitled to find that their agreement was to be a family, on equal footing. A finding of no contract to devise property is not against the weight of the evidence.

Nor does the equitable theory of unjust enrichment apply in this case. "The term 'unjust enrichment' describes a condition resulting from the failure of a party to make restitution in circumstances where it is inequitable." *Lapkin v. Garland Bloodworth, Inc.*, 2001 OK CIV APP 29, ¶ 7, 23 P.3d 958, 961, citing *N.C. Corff Partnership, Ltd. v. OXY USA, Inc.*, 1996 OK CIV APP 92, 929 P.2d 288, 295 (cert. denied). It must first be noted that there is no requirement that heirs "merit" a statutory inheritance. When a person dies intestate, there is a statutory scheme of relatives by affinity and blood who inherit. In the case at bar, the statutory scheme was fulfilled by first cousins because Meadows' parents predeceased him, and he had no siblings, children, or spouse. The cousins inherit whatever Meadows had, which could very well be an unexpected and unearned windfall. It should be remembered that the principal item in the estate was the 60 acres given to Meadows by his parents. There is no evidence that the domestic chores performed by Beaumont over 24 years exceeded in value the room, board, medical care, insurance, and other items received by him from Meadows over that same period. There is no evidence that the value of the ranch was materially affected by the chores or that the bank accounts owned by Meadows at his death

were contributed to by Beaumont to an extent beyond living expenses. In fact the evidence is to the contrary. Beaumont claims to have contributed $200,000 over 24 years to the family. This is roughly $8,300 per year. In addition, the income from farm operations resulted in losses. And, notwithstanding the argument that Meadows could take advantage of the losses on his tax returns, that does not change losses into gains.

We do not mean to belittle the services that family members perform for each other. However, the performance of those services does not result in a claim for unjust enrichment. Although Meadows may have meant to leave his entire estate to Beaumont, he failed in the attempt. Beaumont has no claim in law or equity to the estate or its value. "One is not unjustly enriched by retaining benefits involuntarily acquired which law and equity give him absolutely without any obligation on his part to make restitution." *McBride v. Bridges*, 1950 OK 25, 215 P.2d 830 (syllabus by the court ¶ 1).

Finally, Beaumont seeks recovery pursuant to an implied partnership theory. A partnership is "an association of two or more persons to carry on as co-owners a business for profit. . . ." 54 O.S. Supp.1997 § 1-10 1(6). As a principal point, we will not equate persons living together and agreeing to the division of living expenses and chores as a business for partnership purposes. Beaumont does point to the ranching activities which he conducted, but which operated at a loss and were deducted from Meadows' income tax returns; to the pond he had installed; how he negotiated oil leases and filed the homestead exemption. There is no

question that Beaumont worked hard on the ranch and at the house. Oklahoma recognizes the existence of implied partnerships. *Mendonca v. Russel*, 1915 OK __, 150 P. 1061. However, we may only look to the purported business conducted, not the familial relationship. Beaumont testified that there was no profit so that even if an implied partnership had been found, there would have been no damages for him to collect. There is no error on this account.[1]

The American Civil Liberties Union of Oklahoma and American Civil Liberties Union (jointly ACLU) filed an amicus curiae brief in this case. They contend that the intestacy laws violated the Oklahoma Constitution by, on the one hand, refusing to recognize Beaumont's intimate, gay, relationship with Meadows where nonrecognition works to his disadvantage and, on the other hand, recognizing the relationship where recognition works to his disadvantage. The constitutionality of Oklahoma's laws was not questioned below, nor was Beaumont's sexual orientation the subject of evidence at trial, nor the basis for his claims. "Issues not properly presented to the trial court cannot be considered by this Court on appeal." *Steiger v. City National Bank of Tulsa*, 1967 OK 41, 424 P.2d 69 (syllabus by the court ¶ 3). We decline to address the issue raised by the ACLU.

For the reason's expressed, we AFFIRM the order of the trial court. ADAMS, J., and JONES, J., concur.

1. Beaumont raises for the first time on appeal the doctrine of "meretricious relationships" which courts of equity in some states use especially for equitable distribution of jointly acquired property by unmarried, cohabiting couples. We will not address this argument because it was not properly presented to the trial court in the first instance.

APPENDIX B — JUDGMENT OF THE DISTRICT COURT IN AND FOR CREEK COUNTY, STATE OF OKLAHOMA FILED SEPTEMBER 12, 2002

IN THE DISTRICT COURT IN AND FOR CREEK COUNTY STATE OF OKLAHOMA

NO. P-2000-119

Judge Richard A. Woolery

IN THE MATTER OF THE ESTATE OF
EARL WAYNE MEADOWS,

Deceased.

SAMUEL KENNEGTH BEAUMONT

Plaintiff,

vs.

SAMMY CASTATOR, as Executor and as potential Heir; and KATHRYN L. CASTATOR CREASON, BETTY CARTER MASCHO, ROBERT MEADOWS, BILLIE J. CASTATOR MEYER, as potential Heirs, and ANY OTHER PERSON CLAIMING AS AN HEIR, KNOWN OR UNKNOWN

Defendants.

Appendix B

JUDGMENT

The Ancillary Petition of the Plaintiff, Samuel K. Beaumont, came before this Court for trial on August 21, 2002. All parties were present and announced they were ready for trial. Representing the Plaintiff were Mark T. Hamby and P. Gae Widdows. Representing Samuel Castator as Administrator and as a potential heir and all named Defendants, except Betty Mascho, was Melvin L. Gilbertson. Representing Defendant, Betty C. Mascho, was James D. Bryant.

The Plaintiff presented his evidence and rested his case at which time the Defendants demurred to the Plaintiff's evidence and moved that judgment be entered for Defendants. The Court, having heard oral argument; having weighed all evidence admitted at trial, and having reviewed the relevant legal authorities, finds that the Defendant's demurrer should be sustained.

Plaintiff's claim to the estate of Earl Wayne Meadows is hereby denied in full and Judgment is entered for Defendants.

IT IS HEREBY ORDERED that Plaintiff's Motion for Reimbursement of Expenses is granted. The Estate of Earl Wayne Meadows is ordered to reimburse Mr. Beaumont the sum of $4,340.34 for taxes and insurance and that all other items of expense are subject to review by the Administrator.

IT IS FURTHER ORDERED that Plaintiff shall submit to the Administrator, Mr. Sammy Castator, the other listed claims for reimbursement of expenses advanced by

Appendix B

Mr. Beaumont to the Estate subsequent to the death of Mr. Meadows.

IT IS FURTHER ORDERED Defendants' Motion to Allocate Estate Taxes is granted and the Plaintiff is hereby ordered to reimburse the Estate the sum of $17.642.89.

s/ Richard A. Woolery
Hon. Richard A. Woolery

APPENDIX C — ORDER OF THE COURT OF CIVIL APPEALS, STATE OF OKLAHOMA FILED MARCH 18, 2004

RELEASE FOR PUBLICATION IN THE OKLAHOMA BAR JOURNAL BY ORDER OF COURT OF CIVIL APPEALS

DIVISION I

March 18, 2004

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

98,379 – In the Matter of the Estate of Earl Wayne Meadows, Deceased, Samuel Kennegth Beaumont, Plaintiff/Appellant, vs. Sammy Castator, as Executor and as potential heir; and Kathryn L. Castator Creason; Betty Carter Mascho; Robert Meadows; Billie J. Castator Meyer, as potential heirs; and Any Other Person Claiming as an Heir, Known or Unknown, Defendants/Appellees.

Plaintiff/Appellant's Petition for Rehearing is DENIED.

DONE BY ORDER OF THE COURT OF CIVIL APPEALS this 18th day of March, 2004.

s/ Carl B. Jones
CARL B. JONES, Acting Presiding Judge

APPENDIX D — ORDER OF THE SUPREME COURT OF THE STATE OF OKLAHOMA DENYING PETITION FOR CERTIORARI FILED JUNE 1, 2004

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tuesday, June 1, 2004

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

98,379 In the Matter of the Estate of Earl Wayne Meadows, Deceased; Samuel Kennegth Beaumont v. Sammy Castator, as Executor and as potential heir, et al.

Petition for certiorari is denied.
CONCUR; Watt, C.J., Opala, V.C.J., Hodges, Lavender, Hargrave, Kauger, Winchester, Edmondson, JJ.
DISSENT: Boudreau, J.

* * * *

s/ Joseph M. Watt
CHIEF JUSTICE